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TRIMBLE NAVIGATION LIMITED C/O WAGNER BLECHER
123 WESTRIDGE DRIVE
WATSONVILLE CA 95076

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OFFICE OF PETITIONS

In re Patent No. 7,738,878 :
Issued: June 15, 2010 : LETTER REGARDING
Application No. 09/737,294 : PATENT TERM ADJUSTMENT
Filed: December 13, 2000 :
Attorney Docket No. TRMB-2095 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. §1.705(b)" filed on August 13, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 2188 days to 2345 days.

The request for review of the patent term adjustment is **DISMISSED**.

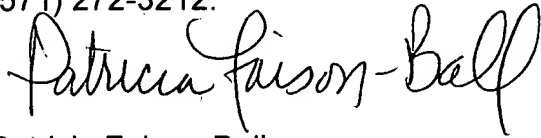
Patentee is given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer**, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The patent term adjustment indicated in the patent is properly reflected.

The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance, there are three periods consumed by appellate review, beginning on November 18, 2005 and ending on August 22, 2007, beginning on March 11, 2008 and ending on December 9, 2008 and beginning on July 27, 2009 and ending on January 29, 2010, which are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). The Office has also determined that the period of overlap is 399 days. Thus, B delay is 1275 days, considering the 399 days of overlap. As such, the patent term adjustment is 2118 (1457 "A delay" days + 1275 "B delay" days - 339 days of overlap - 145 Applicant delay days) days, not 2345 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3212.

A handwritten signature in black ink that reads "Patricia Faison-Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions